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BY HAND AND ELECTRONIC MAIL

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

**Re: Consolidated Arbitrations Performance Standards Request for Comments
Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83,
96-94; Performance Assurance Plan, D.T.E. 03-50**

Dear Ms. Cottrell:

I write on behalf of AT&T Communications of New England, Inc. ("AT&T") in response to the Initial Comments of Verizon Massachusetts ("Verizon") filed with the Department of Telecommunications and Energy (the "Department") in Docket No. 03-50 on February 12, 2004. The comments submitted by Verizon express support for eliminating the performance standards established in the *Consolidated Arbitrations* ("CA"). Verizon's comments inherently lack merit, however, because they contain no analysis of the important legal and policy issues that must factor into the Department's decision regarding elimination of the performance standards at issue.

Put simply, nothing has changed factually that warrants elimination of the CA performance standards. First, parties to administrative agency proceedings are entitled to "reasoned consistency" in agency decision making and a Department decision to eliminate the CA standards would breach that entitlement. *See Boston Gas Co. v. Dept. of Public Utilities*, 367 Mass. 92, 104, 324 N.E.2d 372, 279 (1975). The Department decided (in the CA proceeding) and reaffirmed (in D.T.E. 99-271) *after the adoption of the Performance Assurance Plan* ("PAP") its reasoned decision that the performance standards and remedies established in the CA should remain available to CLECs notwithstanding the availability of remedies under the PAP. Deviation from this position absent some indication of a change in circumstances – of which there is none here – violates the doctrine of "reasoned consistency."

Second, because eliminating the CA performance measures would affect AT&T's legal rights, such an elimination without opportunity for a hearing violates AT&T's right to due process with regard to its negotiated contract rights. Third, it is a violation of well-established Department policy on reconsideration to eliminate or vacate prior Department decisions where, as here, there are no extraordinary circumstances warranting reexamination.

Finally, subsequent changes to the PAP after elimination of the CA standards do not include adequate protective measures for CLEC interests. The Department explicitly stated that implementation of the PAP did not require due process because the PAP did not replace the CA standards. Thus, the PAP could be changed without any process in which CLECs could protect their interests. Should the Department decide to alter PAP remedies to AT&T's detriment after elimination of the CA performance standards, AT&T will be left without an adequate remedy for Verizon breaches. Again, based on earlier Department decisions highlighting the need for adequate remedies to ensure Verizon's performance, this outcome would be unacceptable.

Verizon's comments completely ignore the important legal and policy considerations that must play a role in the Department's decision about whether or not to eliminate the CA performance standards. As such, AT&T respectfully requests that the Department consider these critical issues and maintain the performance standards it established in the *Consolidated Arbitrations* proceedings.

Respectfully submitted,

Jay E. Gruber

cc: Joan Foster Evans, Hearing Officer
Michael Isenberg, Director of Telecom Division
Candace Allgaier, Analyst
D.T.E 03-50 Service List